STREET VACATION 7/9/56 LAGUNA DR. BETWEEN VOODDALE AVE. AND E. LINE OF CRESTON HILLS ADDITION

.

DORSEY, OWEN, MARQUART, WINDHORST & WEST

JAMES E. DORSEY (1889-1959) KENNETH M. OWEN DONALD WEST WALDO E MARQUART JOHN W. WINDHORST HENRY HALLADAY JULE ML HANNAFORD ARTHUR B. WHITNEY JOHN G. DORSEY RUSSELL W. LINDOUIST DAVID R. BRINK HORACE E. HITCH VIRGIL H. HILL ROBERT V. TARBOX DEFOREST SPENCER ROBERT J. JOHNSON MAYNARD B. HASSELOUIST PETER DORSEY GEORGE P. FLANNERY CURTIS L. ROY ARTHUR E.WEISBERG DUANE E. JOSEPH FREDERICK E. LANGE JAMES B. VESSEY WILLIAM A. WHITLOCK CHARLES O. HOWARD

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-ÉDWARD J. SCHWARTZBAUER THOMAS M. BROWN CORNELIUS D. MAHONEY THOMAS S. ERICKSON MICHAEL E. BRESS PAUL G. ZERBY RAYMOND A. PEISTER JOHN J. TAYLOR BERNARD G. HEINZEN YILLIAM J. HEMPEL JOHN S. HIBBS ROBERT O. FLOTTEN MORTON L. SHAPIRO JAMES F. MEEKER JOHN D. LEVINE ROBERT J. STRUYK MICHAEL A. OLSON LARRY W. JOHNSON

THOMAS S. HAY

CURTIS D. FORSLUND

G.LARRY GRIFFITH

DAVID L. MCCUSKEY THOMAS O. MOE JAMES H. O'HAGAN

JOHN M. MASON

LAW OFFICES

2400 FIRST NATIONAL BANK BUILDING

MINNEAPOLIS, MINN. 55402

TELEPHONE 332-3351 AREA CODE 612 OF COUNSEL LEAVITT R. BARKER LELAND W. SCOTT HUGH H. BARBER

CABLE ADDRESS:

January 31, 1967

Mr. Warren C. Hyde, Manager Village of Edina 4801 West 50th Street Edina, Minnesota 55424

Re: Laguna Drive Vacation

Dear Mr. Hyde:

We have examined the legal position of the Village of Edina in the dispute which has developed between Mr. R. T. Crist and Mrs. Loren W. Haling over Laguna Drive.

By resolution of the Village Council on July 9, 1956, that portion of Laguna Drive lying between Wooddale Avenue and the east line of Creston Hills Addition was purportedly vacated. The vacated portion of Laguna Drive was bordered on the north by land dedicated by plat to the Village for park purposes. The south side of the drive was bordered by land belonging to the Halings. On the east the Drive ends at property now belonging to R. T. Crist.

Subsequent to the resolution vacating the Drive, the Village Director of Parks and Recreation, by letter, granted an easement to Mr. Crist over the north one-half of the vacated Drive. The Halings objected to the easement and a dispute developed between the Halings and Mr. Crist.

In order to clarify the position of the Village in this dispute, I had prepared a legal memorandum, a copy of which is enclosed. As you can see, the memorandum reaches the conclusion that the Village should not have granted the easement to Mr. Crist.

Mr. Warren C. Hyde Page 2

January 31, 1967

After the memorandum was prepared, further investigation revealed that the only signature on the petition for vacation was that of Mr. Haling. Minnesota Statutes, Section 412.851 requires that a village resolution vacating a street must be based on a petition of "a majority of the owners of land abutting on the street..." As the accompanying memorandum points out, the Village owns only an easement for park purposes on the land north of Laguna Drive; it is not the owner of the fee. As the holder of only an easement the Village is not an "owner" within the meaning of Minn. Stat. § 412.851 for purposes of determining what is a majority of the abutting owners who must sign a petition for vacation of a street. See Opinion of the Attorney General 396-G-16, October 22, 1958. The owner of the underlying fee to the park land could join in a petition to vacate the street; the Village could not.

As of July 9, 1956, there were three owners of the land abutting that part of Laguna Drive east of Wooddale Avenue:
(1) the Halings, (2) R. T. Crist or his predecessors in title, and (3) the dedicator of the plat or his successors in title. Any valid petition for vacation of the street would have had to be signed by at least two of these.

It is therefore my opinion that the resolution of the Village Council of July 9, 1956, purporting to vacate part of Laguna Drive was invalid and of no effect.

If the Village still wishes to vacate the Drive, it must have the signatures of any two of the three abutting owners of the fee on a petition to vacate.

According to records in the office of the Registrar of Titles of Hennepin County, Creston Hills Addition, which includes the affected part of Laguna Drive, was platted in 1947 by a Judson L. and Emma J. Crouse. The Crouses, or, if they are no longer living, their heirs or devisees, must join with Mrs. Haling in a petition for vacation. In view of the dispute Mr. Crist would presumably be unwilling to join in a petition for vacation.

Mr. Warren C. Hyde Page 3

January 31, 1967

The League of Minnesota Municipalities has indicated that it will recommend a change in Minnesota Statutes, § 412.851 to permit a municipality, on its initiative, to schedule vacation proceedings. In view of this, if the Village wishes to vacate Laguna Drive it may be well to wait to see if this law is enacted before proceeding further.

Very truly yours,

William A. Whitlock

WAW:mc

Enc.

cc: Mr. Ken Rosland

Mrs. Florence Hallberg

MEMORANDUM

Re: Effect of Vacation of Street Abutting Park Land.

In 1956 the Village of Edina vacated that part of Laguna Drive located east of Wooddale Avenue. The area north of the vacated portion contains a small strip of land and a lake. By the original plat dedication, recorded in 1947, this area north of the Drive is designated as a park. The land south of the vacated portion now belongs to a Mrs. Haling. On the east, the vacated portion of the Drive terminates at the rear of property now belonging to an R. T. Crist.

In 1961, the Edina director of parks agreed to let Crist have an easement over the north half of the vacated drive for access to the rear of Crist's lot. In turn, Crist was to permit people using the park to cross over his land to reach a point out into the lake. This agreement is in the form of a letter by Clifton French to Crist. In the letter, French requests a letter from Crist confirming the agreement. There is no letter from Crist in our files. Crist has been using the north half of the drive and has been permitting people to cross his land to get to the point.

There is an opinion letter in the file, written by Donald Herbert to the Village Clerk in November, 1960. The letter indicates that at that time the Halings were objecting to the easement given to Crist on the ground that, upon vacation, the fee to the entire street passed to them. The opinion letter states, in effect, that the law is very uncertain, but that it is probable that the Halings have title only to the south half of the street and that the north half passes to the Village for park purposes.

Mrs. Haling now takes the position that the Village cannot grant an easement to Crist over the north half of the vacated street because the Village is required to maintain that land for park purposes. The questions presented are who has title to this north half of the vacated street and what restrictions, if any, there are on the title.

There are two basic rules involved here. The first rule is that when property abutting on a street is conveyed by reference to a plat designation the presumption is that the conveyance includes the abutting street up to the center line, subject to the easement for street purposes. Of course, when the street is vacated the adjoining owners take free of the easement.

The other rule is that when land is dedicated for park purposes by means of a plat, the fee remains in the dedicator and those who take under him, and the municipality has only an interest in the nature of an easement to use the land for park purposes. This is somewhat contrary to Herbert's opinion letter which states that the location of the fee is uncertain, but the rule stated herein was made certain by Etyler v. Mondale, 266 Minn. 353, 123 N.W. 2d 603 (1963).

In the present situation we have a vacated street, on one side of which is a fee owner and on the other side of which is land dedicated for park purposes. The state of the title to the north half of the street could therefore be in any one of three possible conditions: (1) Mrs. Haling has a fee title to this strip; (2) the dedicators of the plat and those who take under them have fee title; or (3) the dedicators and those who take under them have fee title subject to an easement to the Village for park purposes.

I was unable to find any case, either in Minnesota or elsewhere, which discusses the effect of vacating a street which adjoins park property. Herbert's opinion letter states that "after quite extensive research" he was also unable to find such a case.

The only argument in favor of Mrs. Haling's claim to the entire vacated street would have to be based upon several cases which have held that when a street with navigable waters on one side of it is vacated, the fee title of the land owners on the other side extends across the entire width of the street. See <u>Burkhart v. City of Fort Lauderdale</u>, 156 So. 2d 752 (Fla. App. 1963); <u>10 McQuillan, Municipal Corporations</u> §30.33. By analogy, Mrs. Haling could claim that a park is somewhat like a body of water. Since in both cases there may be no true fee owner on one side to claim half the street, she should be entitled to all of it.

Normally, however, an adjoining landowner is entitled to only half a vacated street. And here there are fee owners on both sides of the street, so Mrs. Haling really has no basis for her claim to all of it.

But if this view is followed to its logical conclusion it means that the original dedicator or his heirs or devisees now have unencumbered title to just the narrow strip of land that constitutes the north half of the vacated street.

In fact, the normal presumption that property holders have fee title to the center of an adjoining street appears to have been devised to avoid the problem of creating random strips of land with ownership in different hands from that of adjoining property. See White v. Jefferson, 110 Minn. 276, 124 N.W. 373 (1910).

For example, A, by plat dedication, creates two lots numbered 1 and 2, with a street between them. A then deeds lot 1 to B and lot 2 to C, in deeds which describe the land by plat designation. (E.g., "I convey to B lot 1 of Blackacre, according to the plat thereof on file with the register of deeds.") The presumption is that B owns not only lot 1 but also half the adjoining street. If the presumption were otherwise and the street were vacated, A would end up owning the economically useless strip of land that had formerly been a street.

If the reason for the rule is applied to the present situation, then the dedicator owns the fee to the north half of the vacated street, just as he owns the fee to the adjoining park land. However, the north half of the vacated street should also be subject to the park dedication of the adjoining land. In other words, the argument is that when land is subject to a certain servitude (such as an easement for park purposes), upon vacation of an adjoining street the servitude should also apply to the adjacent half of the street. There is no authority for this, but there is also no authority for any other result, and this rule seems the most reasonable.

In any event, it appears that the Village should not have granted an easement to Crist. If Mrs. Haling owns the entire vacated street, then, of course, the Village has no right to grant an easement on it. Similarly, if the north half of the street belongs to the original dedicator free of any easement for park purposes, then likewise the Village has no right to grant an easement.

The situation is less clear if title to the north half of the street lies in the dedicator but subject to the easement to the Village for park purposes. The argument here would be that the Village is under a duty to use the land for park purposes and that the easement granted to Crist is inconsistent with these purposes. There are numerous cases that have disapproved the use of park land for private purposes. See McQuillan \$ 28.52. Moreover Mrs. Haling probably has an enforceable right to have the land maintained for park purposes. See Kray v. Muggli, 84 Minn. 90, 86 N.W. 882 (1901) (dictum), which Mrs. Haling has cited. Crist can, however, argue that his use of the land is de minimus, and in fact is consistent with park purposes because as a quid pro quo the users of the park can get to the point.

It may well be that French had no authority to grant the easement. This would depend upon the authority granted him by the council. If he was not given any authority to grant an easement (or some broader grant of authority that could reasonably be construed to include the power to grant an easement), then the contract with Crist is in no way binding on the Village. In general, the doctrines of apparent authority or estoppel cannot be invoked against a municipality in this sort of situation, because the actual authority of officers is a matter of public record. See City of Fergus Falls v. Whitlock, 247 Minn. 347, 77 N.W. 2d 194 (1956).

Conclusion. The north half of the road belongs either to (1)
Mrs. Haling in fee, free of any encumbrance; (2) the dedicator of the plat,
free of any encumbrance; or (3) the dedicator of the plat, subject to an

▶asement to the Village for park purposes. There is insufficient authority to determine which of these three answers is the correct one, although, as argued above, number (3) seems to be the most reasonable solution.

No matter which answer is correct, it appears that whatever easement may have been granted to Crist should be withdrawn. This is obvious under answers (1) and (2) because then the Village has no claim whatsoever to the property.

Under number (3) the easement is improper either because it is inconsistent with park purposes or because French had no authority to grant it.

C.J.H. 12/9/66

ORDER TO SHOW CAUSE IN PROCEEDINGS SUBSEQUENT TO INITIAL REGISTRATION OF LAND A-15435 STATE OF MINNESOTA,) County of Hennepin.

DISTRICT COURT.
FOURTH JUDICIAL DISTRICT.
In the Matter of the Petition of RICHARD T CRIST AND MARGARET ALICE CRIST IN Relation to Land Described in Certificate of Title No. 309041 as follows:

Lot 18, Block 1, Southdale Third Addition, Emmepin County, Minnesota.

To: Village of Eddna, State of Minnesota, Celia M. Haling, The Farmers and Mechanics Savings Brown, Unknown Heirs of Kenneth Crouse, Deceased, Unknown Heirs of Judson L. Crouse, Deceased, Ivamae Lee.

Upon receiving and filling the Report of the Examiner of Titles It the above entitled matter,

IT IS ORDERED, That you, and lipersons interested, appear before this Court on the 2nd day of April. 1968, at 2:00 P. M. in Room 10-4 of the Hennepin County Court House in said County, and then, or as soon thereafter as said matter can beheard, show cause, if any there be, why this Court should not enter an Order as follows:

(1) That the Registrar of Titles show by memorial upon Certificate of Title No. 112050½ that the following portion of vacated Laguna Drive lying Northerly of the center line thereof and Easterly of a line drawn parallel with and 30 feet Easterly of the Northerly continuation of the most Northerly curve of the center line of Wooddale Avenue as dedicated in "CRESTON HILLS, HENNEPIN COUNTY, MINNESOTA" upon the refiling with him of resolution of vacation Document No. 504419, Files of the Registrar of Titles No. 113050½ and enter a new Certificate for the Parks and vacated Laguna Drive this added description into the body of said Certificate and that the omit the memorial of said Document No. 504419 and the memorial of his Order;

(2) That he cancel said Certificate of Title No. 113050½ and enter a new Certificate for the Parks and vacated Laguna Drive to the benefit of Lot 18, Block 1, Southdale Third Addition, and that pursuant to said deed issue a Certificate of Title No. 10050½ and enter a new Certificate of Title No. 13050½ charting the said Document of vacated Laguna Drive for the benefit of Lot 18, Block 1, Southdale Chere insert the document number assigned to the above quit claim deed);

IT IS FURTHER ORDERED, That this Order be served at least 5 days prior to such hearing upon the above named parties residing in this State in the manner provided by law for the service of summons in a civil action; it shall be served at least 10 days prior to such hearing upon any of the above named non-residents by sending this Order by mail to such non-resident at his post-office address as stated in the Certificate or in any registered instrument on file with the Registrar, or if his address is not so stated, then to his last known address by registered or certified mail; return receipt; it shall be served by 2 weeks published notice upon any party whose address is unknown.

Dated: March 6, 1968.

/s/ CRANE WINTON,
Judge.

Attendance is not required at said Attendance is not required at said time except to object to the entry of the above described Order.
Approved by:
MARSHALL K. SIGFORD,
Examiner.
THOMPSON, HESSIAN,
FLETCHER & McKASY,
By FREMONT FLETCHER, Attorneys,
600 Midland Bank Building,
Minneapolis, Minn. 55401. 10124 98

IN PROCEEDINGS SUBSEQUEN'I INITIAL REGISTRATION OF L STATE OF MINNESOTA,). County of Hennepin.)

DISTRICT COURT.

FOURTH JUDICIAL DISTRICT.

In the Matter of the Petition of RICHARD T. CRIST AND MARGARET ALICE CRIST in Relation, to Land Described in Certificate of Title No. 30941 as follows:

Lot 18, Block 1, Southdale Third Addition, Hennepin County, Minnesota.

TC: Village of Edina, State of Minnesota, Celia M. Haling, The Farmers and Mechanics Savings Bunk of Minneapolis, Susan Brown, Unknown Heirs of Kenneth Crouse, Deccased, Unknown Heirs of Judson L. Crouse, Deceased, Ivanne Lee.

Upon receiving and filing the Report of the Examiner of Titles it the above entitled matter,

IT IS ORDERED. That you, and the Persons interested, appear before the Court on the 2nd day of April. 1968, at 2:00 P. M. in Room 10-4 of the Hennepin County Court House in said County, and then, or a soon thereafter as said matter can be heard, show cause, if any there be, why this Court should not enter an Order as follows:

(1) That the Registrap of Titles show by memorial upon Certificate of Title No. 113050 ½ that the following portion of vacated Laguna Drive is added to the description therein: That part of vacated Laguna Drive is added to the description therein: That part of vacated Laguna Drive is added to the description with and 30 feet Easterly of the Northerly continuation of the most Northerly curve of the center line of Wooddale Avenue as dedicated in "CRESTON HILLS, HENNEPIN COUNTY, MINNESOTA".

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upon the refiling with him of resonation of vacated Laguna Drive in the cancel said Certificate of Title he carry forward this added description into the body of said Certificate and that upon the resonation of the center line of wooddale avenue as dedicated in the part of vacated Laguna Drive in the part as created by deed now my free insert the document number assigned to the above quit claim deed);

IT IS FURTHER ORDERED. That this Order be served at least 5 days prior to such hearing upon the above named parties residing in this State in the manner provided by law for the service of summons in a civil action; it shall be served at least 10 days prior to such hearing upon any of the above named non-residents by sending this Order by mall to such non-resident at his post-office address as stated in the Certificate or in any registered instrument on file with the Registrar, or if his address is not so stated, then to his last known address by registered or certified mall, return receipt; it shall be served by 2 weeks published notice upon any party whose address is unknown.

Deted: March 6, 1968. nknown.
Deted: March 6, 1968.
/s/ CRANE WINTON. Attendance is not required at said time except to object to the entry of the above described Order. Approved by: MARSHALL K. SIGFORD; Examiner. MARSHALL K. SIGFORD,
Examiner.
THOMPSON, HESSIAN,
FLETCHER & McKASY.
By FREMONT FLETCHER, Attorneys,
600 Midlend Bank Building,
Minneapolis, Minn. 55401. 10124 \$8

Village of Edina

4801 WEST FIFTIETH STREET . EDINA 24, MINNESOTA

WALNUT 7-8861

August 30, 1961

Mr. R. T. Crist 6716 Point Drive Edina 24, Minnesota

Dear Mr. Crist:

Here below I have tried to put in as few words as possible my understanding of the basic points of our discussion and the agreement we reached.

- 1. The portion of Laguna Drive from Wooddale Avenue east remains vacated as per action by the Village Council dated July 9, 1956.
- 2. Under this vacation action the south one-half of the vacated portion of Laguna Drive reverted to Mr. Haling, and the north one-half to Village ownership. The Halings wish to claim the portion going to them, and it is their intention to make it an itegral part of their front yard.
- 3. Our general aim for the area which has reverted to Village ownership and has become an integral part of the park is to keep it park-like. However, your request for automobile access across park property to get to the rear of your lot we are willing to grant providing you are willing to grant to the Village easement for pedestrian and park service vehicles traffic over that portion of your lot to get out on the point of land which extends on to the lake.

Your access will start at-and-across Haling's turn-off from Wooddale (Mr. Haling has agreed to this) and thence over park property to your west lot line. It is our intention to keep this path of traffic open to you in fair weather conditions.

I hope this states accurately what we agreed to and would appreciate your letter confirming same.

Sincerely yours,

Clifton E. French

Director Parks and Recreation

Oleflan C. French

CEF:mem

THOMPSON, HESSIAN, FLETCHER & MCKASY

LAWYERS

600 MIDLAND BANK BUILDING MINNEAPOLIS, MINNESOTA 55401

PAUL J.THOMPSON (1875-1950)
MAURICE A.HESSIAN, SR.(1888-1956)
ABBOTT L. FLETCHER
JOHN J. M¢KASY
MAURICE A.HESSIAN
FREMONT C.FLETCHER
DONALD L.BUSH
JOHN O.BRUNELLE
JOHN F. STONE

November 16, 1967

PHONE 335-0911 AREA CODE 612

Mrs. Florence B. Hallberg Village Clerk Village of Edina 4801 West 50th Street Edina, Minnesota 55424

Re: Laguna Drive matter

Dear Mrs. Hallberg:

The above matter was on the Council agenda for Monday, November 6, and at that time was deferred for two weeks at the request of Mr. Crist.

This matter has some rather complicated legal problems in connection with it and I would very much appreciate a further continuance for an additional two weeks, or longer, if it would be satisfactory with the Council.

I have discussed this with Mr. Whitlock and I believe that such a continuance would be satisfactory with him. This matter has extended over a long period of time and it seems to me that a little more time at the present would not be prejudicial, and in fact might be very beneficial, to all concerned if a final legally acceptable solution can be reached.

In the event that a continuance is not acceptable for any reason, would you please advise me prior to Monday evening.

Fremont Fletcher

Yours very truly,

FF:ch

cc: Mr. William Whitlock
Mr. Richard T. Crist
Mr. Charles A. Cox

June 31, 1957

In. Harca C. Bylo, Paragra Villago of Filma 4801 Host 50th Street Filma, Hiracota 55484

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Em D. Dill:

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JAMES E. DORSEY (1889-1959) WALDO E MARQUART JOHN W WINDHORST HENRY HALLADAY JULE M. HANNAFORD ARTHUR B. WHITNEY RUSSELL W.LINDOUIST HORACE HITCH VIRGIL H. HILL ROBERT V. TARBOX DEFOREST SPENCER ROBERT J. JOHNSON M. B. HASSELOUIST PETER DORSEY GEORGE P. FLANNERY CURTIS L.ROY ARTHUR E.WEISBERG DUANE E.JOSEPH FREDERICK E. LANGE

JOHN W. JONES
JAMES B. VESSEY
WILLIAM A. WHITLOCK
E. J. SCHWARTZBAUER
THOMAS M. BROWN
CORNELLUS D. MAHONEY
THOMAS S. ERICKSON
MICHAEL E. BRESS
PAUL G. ZERBY
RAYMOND A. REISTER
JOHN J. TAYLOR
BERNARD G. HEINZEN
JOHN S. HIBBS
ROBERT O. FLOTTEN
MORTON L. SHAPIRO
JAMES F. MEEKER
JOHN D. LEVINE
ROBERT J. STRUYK
MICHAEL A. OLSON

LARRY W. JOHNSON

THOMAS S.HAY
CURTIS D. FORSLUND
G. LARRY GRIFFITH
CRAIG A. BECK
DAVIO L. MCCUSKEY
THOMAS O. MOE
JAMES H. OHAGAN
JOHN M. MASON
MICHAEL W. WRIGHT
LARRY L. VICKREY
LOREN R. KNOTT
JOHN W. LARSON
PHILLIP H. MARTIN
JOHN J. HELO

OF COUNSEL
DAVID E BRONSON
HUGH H BARBER
LELAND W SCOTT
LEAVITT R BARKER

LAW OFFICES

2400 FIRST NATIONAL BANK BUILDING
MINNEAPOLIS, MINN. 55402

TELEPHONE: 332-3351

AREA CODE: 612

CABLE ADDRESS: DOROW

Hovember 6, 1967

In. Warron C. Eyde, Manager Villege of Edina 4801 West 50th Street Edina, Minnesota 55424

Re: Legue Drive Vecation

Door I'm. Hyde:

In our previous lotter to you of January 31, 1967, regarding the dispute between Mr. R. T. Crist and Mrs. Loren Maling over Laguer Drive, we advised you that the vecation of the affected portion of the Drive on July 9, 1956, was void and of no effect because of an insufficient number of signatures on the patition for vecation.

Our attention has now been directed to the case of Hissempolis Erewing Co. v. City of Flat Grand Forks, 118 Hiss. 467, 136 H.W. 1103 (1912), in which the Minnesota Sugress Court indicated that a street vacation based on a patition with insufficient signatures can be invalidated only by a direct appeal from the vacation proceedings, or by use of the extraordinary writ of certiorari, which again must be directed against the vacation proceedings. In other words, whose parties objecting to the vacation challenge it in court invalidately, the vacation must thereafter be treated as valid for all purposes. Therefore, it is my opinion that the vacation of Lagura Drive is no longer open to challenge, even though it was originally accomplished in an invalid names.

An you were previously advised in a new random based on the assumption that the vacation was valid, it is my opinion that the Village commot grant an essement over the north half of the vacated street to ir. Crist. It has been the law in this state for many years that land acquired by a nunicipality for public purposes cannot thereafter be used for private purposes. Each v. City of Vinona, 271 Hinn. 145, 135 H.H.2d. 150 (1565); Hendrick v. City of St. Faul, 213 Hinn. 283, 6 H.H. 2d 449 (1942); Lawton v. Joenting, 55 Hinn. 163, 104 H.H. 830 (1905). The granting of an easement to Ir. Crist over a portion of the vacated Drive rould almost certainly be considered a private use vithin the scope of this rule.







lir. Norren C. Ayde Poge 2

November 6, 1967

It has been contended on behalf of ir. Crist that the Villege has a cortain obligation to extempt to comply with the exceedent originally entered into by ir. French on behalf of the Villege. Furthermore, it has been pointed out that the essement over the north half of the vacated Drive can be dedicated to the use of the general public, even though it would primarily be used by the Crists.

Although these factors my present certain equities in favor of Ir. Criot's contention, I believe that it must be rejected. A concerble situation was presented in Look v. El Faso Union Fassenger Depot Co., 228 s.W. 917 (Yex. 1921), in which a municipality attempted to comprenise a lawsuit with certain private parties by building a siderally across park property. Although the siderally was public, it was primarily of benefit to the private parties. The Taxas Court held that under these circumstances a tempoyer having property across a street from the park could enjoin the construction of the siderally on the ground that the siderally would be inconsistent with park purposes.

The Village should therefore block off the vacated portion of the Drive, and should no longer parmit it to be used as access to lir. Crist's property.

Very truly yours,

William A. Whitlock, Village Attorney

MAUSTIC







IV. TAX EXEMPT PROPERTY

Mr. Rosland pointed out to the Park Board some lots that have gone tax delinquent in the Village. Of the lots that were pointed out, it was felt that only two locations would be of any interest. The first being Lot 8, Block 7, Brookview Heights 2nd Addition. This lot is adjacent to the east of our present park property referred to as the 70th Street strip.

The second location are Lots 20 and 21, Block 7, Brookview Heights 2nd Addition and Lots 11, 12, 13, and 14, Block 3, Brookview Heights 3rd Addition. These lots are located west and adjacent to our 70th Street strip.

After some discussion, Mr. Giebink moved that we recommend to the Council the acquisition of Lot 8, Block 7, Brookview Heights 2nd Addition. Mr. Lewis seconded and the motion carried.

After further discussion the question of the remaining lots was tabled until an estimate of the back taxes and special assessments could be made.

After an investigation of the special assessments, we were advised that the Village would not have to assume any special assessments or back taxes. A telephone poll was made on March 12, 1964 of the members present and it was their recommendation that the Park Board acquire the subsequent tax delinquent lands: Lots 20 and 21, Block 7, Brookview Heights 2nd Addition and Lots 11, 12, 13, and 14, Block 3, Brookview Heights 3rd Addition.

Meeting adjourned at 8:45 P.M.

Respectfully submitted.

Ken Rosland, Sec'y Edina Park Board

KER:skv

NSP (Capy 7 Les)

NORTHERN STATES POWER COMPANY

September 12,1967

Florence B. Hallberg, Village Clerk Village of Edina 4801 West 50th Street Edina, Minnesota - 55424

Dear Mrs. Hallberg:

This is to acknowledge receipt of a notice of hearing on the proposed vacation of a portion of Laguna Drive, which portion is described as follows:

That portion of Laguna Drive lying between Woodale Avenue and the East Line of Creston Hills Addition.

We have indicated on the attached sketch the location of our facilities in this area and wish to advise that we have no objection to this vacation provided we are granted a permanent easement for the retention of our facilities or are reimbursed for rerouting them.

Thank you for your consideration in this matter.

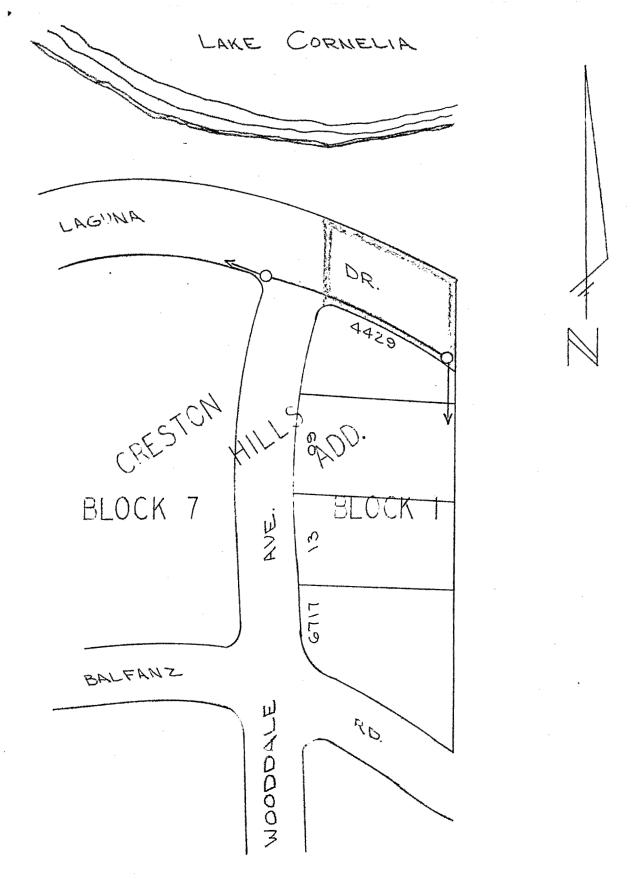
Yours truly,

E.P. Robertson
Distribution Superintendent
Minneapolis Division

George C. Lewis

Senior Right of Way Agent

EPR/GCL:kk



S/2 SEC. 30 TZ8 RZ4 VILLAGE OF EDINA

			LEGEN	1D			Northern States Power Co.
	POL NSP	ES TEL	WIRE	ANCHOR	OVERHEAD GUY	STREET LIGHT	ELECTRIC DISTRIBUTION DEPARTMENT MINNEAPOLIS DIVISION
NEW	0	8	(Carrier 1992))	200		TITLE PROPOSED STREET VACATION
EXISTING	0	8		\rightarrow	-	- *	DILLAGE OF EDINA
TO BE REMOVED	0	8	**	-×-)		米米	DATE 9-13-67 CHK BY DAL A-0450
							APPROVED BY E.P. Ruliantena-GL.

MINNEAPOLIS GAS COMPANY

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MINNEAPOLIS, MINNESOTA 55402

August 30, 1967

Mrs Florence B'Hallberg Village Clerk Village of Edina 4801 West 50 Street Edina, Minnesota 55424

Dear Mrs Hallberg

Thank you for the notice of proposed street vacation of part of Doran Drive and Laguna Drive.

We have no installation in Laguna Drive here and do not object to this vacation.

In Doran Drive there is a $1\frac{1}{2}$ inch steel main extending into the vacation area about 8 feet, as shown on the enclosed print, but since this main serves only the adjoining property, we do not object to this vacation.

Sincerely

Warner P Blake

Operations Planning Engineer

WPB:jm enc Mr. Lewes - 15. P.

330-6256

Emma fibility

Vill 1640' 80'n

DORSEY, MARQUART, WINDHORST, WEST & HALLADAY

DONALD WEST WALDO F. MARQUART JOHN W. WINDHORST

JULE M. HANNAFORD ARTHUR B WHITNEY RUSSELL W LINDQUIST DAVID R BRINK VIRGIL H. HILL DOBERT V TARROY DEFOREST SPENCER ROBERT J. JOHNSON M. B HASSELQUIST PETER DORSEY GEORGE P ELANNERY

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OF COUNSEL DAVID E BRONSON HUGH H. BARBER LELAND W. SCOTT LEAVITT R. BARKER LAW OFFICES

2400 FIRST NATIONAL BANK BUILDING MINNEAPOLIS.MINN.55402

> TELEPHONE: 332-3351 AREA CODE: 612 CARLE ADDRESS:DOROW

> > August 24, 1967

Mrs. Florence B. Hallberg Village Clerk Village of Edina 4801 West Fiftieth Street Edina, Minnesota 55424

Dear Mrs. Hallberg:

Tom Erickson is on vacation and will not be back until September 5. In his absence I have been trying to take care of the various matters which he normally handles. As a result, I have reviewed the descriptions which you sent Tom regarding the Laguna Drive vacation and the Bergerud division.

The Laguna Drive description which you sent does not specifically locate the West line. Accordingly, I suggest that you use the following description:

> All that part of Laguna Drive lying Westerly of the East line of Creston Hills Addition and lying Easterly of a line drawn parallel with and 30 feet Easterly of the centerline of Woodale Avenue extended Northerly to the South line of Laguna Drive.

The description for the Bergerud property, prepared by Cardarelle & Associates, Inc., seems to me to be somewhat inaccurate, in that it refers to the South 120 feet as measured along the East and West lines. From the dimensions which appear on the survey, the East and West lines do not run at right angles to the South line of the lot. Accordingly, there are not exactly 120 feet. In lieu of the surveyor's description, I suggest that you use the following description:

> All that part of Lot 4, Auditor's Subdivision No. 325 lying Southerly of a line drawn from a point on the East line of said Lot 4, distant 120 feet Northerly, as measured along said East line, from the Southeast corner of said lot, to a point on the West line of said lot, distant 120 feet Northerly, as measured along said West line, from the Southwest corner of said lot, according to the recorded plat thereof.

Mrs. Florence B. Hallberg Page 2

August 24, 1967

Both of the descriptions which I have prepared are somewhat more cumbersome than the two which you forwarded to me; however, I believe they are more accurate.

If you have any questions, please do not hesitate to give me a call.

gry truly yours

. Lawry Griffith

GLG:1c

SYATE OF MINUSSOTA; COUNTY OF PERMEPUT) SS. VILLACE OF EDUFA)

CERTIFICATE OF MALAITE

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	g the duly qualified acting Village Clerk of
end variable of manue frameworks a	eroby cernify that on the following date
August 25, 1907	acting on behalf of said Willige, I deposited
in the United States mail copies of	OF THE SUCCESSES
NOTICE OF PUBLIC HEARING OF	STREET VACATION
	welepst with pearage thereon duly prepaid;
eddressed to the parsons of the ed	lives see the control meiling lied (Ex-
	beroof, which list is on file in my cflice ,
	; on the words of the County Auditor as
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10 days prior to the date of t	os esison bian 2000 ezia I dada ben "gairaed en
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August 19 67	THE CONTRACTOR OF THE SECOND
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VILLAGE OF EDINA 4801 W. 50TH STREET EDINA, MINNESOTA 55424

NOTICE OF PUBLIC HEARING ON PROPOSED STREET VACATIONS

THE EDINA VILLAGE COUNCIL will meet at the Edina Village Hall, 4801 West 50th Street, Edina, on Tuesday, September 5, 1967, at 7:00 p.m. to consider the proposed street vacations described as follows:

- 1. That portion of Doran Drive lying Northerly and Northwesterly of a circle with a radius of fortyfive feet (45°) and a center point located fortyfive feet (45°) East of the West line of Doran Drive and seventy feet (70°) South of the Easterly extension of the North line of Lot 1, Block 1, Bach's Addition
- 2 That portion of Laguna Drive lying between Wooddale Avenue and the East Line of Greaton Hills Addition,

All objections and recommendations will be heard at said Meeting. BY ORDER OF THE VILLAGE COUNCIL.

FLORENCE B. HALLBERG Village Clerk

Laguna Dr. St. Varain £18B1 Reclard T. Crist 6716 Point Drive L. W. Haling - 4429 Laguna Dr. 1 2 Bl arthur E. Dloon - 6816 Monddale n-S-P. n.w. Bell mpes. Las Co.

VILLAGE OF EDINA 4801 W. 50TH STREET EDINA, MINNESOTA 55424

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- 2. That portion of Laguna Drive lying between Wooddale Avenue and the East Line of Creston Hills Addition.

All objections and recommendations will be heard at said Heeting. BY ORDER OF THE WILLAGE COUNCIL.

FLORENCE B. HALLBERG Village Clerk

Please publich in the Edison Courier August 24, 1967. and 31,1967 Please cond us two Affidavite of Publication.
Please and us ten elippings.

August 22, 1967

Mr. Thomas S. Erickson 2400 First National Bank Bldg. Minneapolis, Minnesota 55402

Dear Tom:

At the Council Meeting last night, September 5 was set as Hearing Date for vacation of a portion of Laguna Drive described below. This street was vacated in July, 1956; however, Mr. Whitlock has indicated that this vacation was invalid in his letter to Mr. Hyde dated January 31, 1967.

I am enclosing a copy of the "Notice of Public Hearing" as well as the plat which shows the area to be vacated indicated in red.

Will you please advise me if this legal discription is satisfactory.

Yours very truly,

Village Clerk

fbh enclosures-2

3.02.05.25 VRO\$20,50,M 3 80769 (1962 Aerial Photo) 1 436.05 "CREST 5112 m 2683 £5'505 San San

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7/9/56

4. The Clerk shall, as soon as may be, prepare and transmit to the County Auditor a certified duplicate of said assessments, with each then unpaid installment and interest set forth separately, to be extended upon the proper tax lists of the County, and the County Auditor shall thereafter cause said assessments to be collected in the manner provided by law. duplicate assessment roll shall be designated as ASSESSMENT ROLL FOR TRUNK WATERMAIN IMPROVEMENT NO. 78 AND LATERAL CONNECTIONS THERETO; and all amounts collected in respect of the assessments therein contained shall be similarly designated by the County Treasurer, and by him credited to Sinking Fund Account for 1954 Improvements 2nd Series Fund.

LIBI Creston Hills Maker Replan

Motion for adoption of Resolution was seconded by Fronk, and on Rollcall there were four ayes and no nays, as follows: Bredesen, aye; Fronk, aye; Tupa, aye; and Erickson, aye; and the Resolution was adopted.

ATTEST:

PETITION FOR VACATION OF LAGUNA DRIVE BETWEEN WOODDALE AVENUE AND EAST LINE OF CRESTON HILLS ADDITION. Clerk presented Affidavits of Publication and Posting of "Notice of Hearing on Petition to Vacate Street," publication being in Edina-Morningside Courier, and posting being on Official Village Bulletin Boards. Affidavits were approved as to form and ordered placed on file. Petitioner Haling was present to support his petition; also to ask that he be allowed to acquire the adjacent property now owned by the Park Board. Mr. Hyde stated the Village will be glad to have the petitioner beautify the street if he wishes to do so. There were no objections to the proposed Vacation, and Bredesen offered the following Resolution and moved its adoption:

RESOLUTION VACATING LAGUNA DRIVE BETWEEN WOODDALE AVENUE AND EAST LINE OF CRESTON HILLS ADDITION

WHEREAS, a majority of the owners of the land abutting Laguna Drive between Wooddale Avenue and the East Line of Creston Hills Addition, as the same is recorded in the office of the Register of Deeds of Hennepin County, Minnesota, have petitioned for the Vacation of said Street; and

WHEREAS, two weeks' published notice and posted notice of a hearing to be had on said petition on July 9, 1956, at 7:30 p.m., has been given and made, and a hearing has been had thereon by the Village Council:

NOW, THEREFORE, BE IT RESOLVED by the Village Council of the Village of Edina, Hennepin County, Minnesota, that

That portion of LAGUNA DRIVE, lying between WOODDALE AVENUE and the EAST LINE OF CRESTON HILLS ADDITION, as platted and of record in the office of the Register of Deeds of Hennepin County, Minnesota, be, and is hereby vacated; provided that said Village excepts from this Vacation proceedings and reserves unto itself and its assigns an easement for all public utility purposes, including, without limiting the general nature of said reservation, an easement for electric, gas, sewer, water, and telephone equipment on, over and under the center twenty feet in width of the street hereby vacated.

Motion for adoption of the Resolution was seconded by Fronk, and on Rollcall there were four ayes and no nays, as follows: Bredesen, aye; Fronk, aye; Tupa, aye; and Erickson, aye; and the Resolution was adopted.

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Tillage Clerk

TUTY ORT YORT TRANSTER OF WATER. Engineer Zikan cited a report from the large larged of Heglith concerning to mafer of water from well to another; that we have as a month that from doing so. The rated Bilth of Motel wishes to write this was a large from the conservation of the

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IV. TAX EXEMPT PROPERTY

Mr. Rosland pointed out to the Park Board some lots that have gone tax delinquent in the Village. Of the lots that were pointed out, it was felt that only two locations would be of any interest. The first being Lot 8, Block 7, Brookview Heights 2nd Addition. This lot is adjacent to the east of our present park property referred to as the 70th Street strip.

The second location are Lots 20 and 21, Block 7, Brookview Heights 2nd Addition and Lots 11, 12, 13, and 14, Block 3, Brookview Heights 3rd Addition. These lots are located west and adjacent to our 70th Street strip.

After some discussion, Mr. Giebink moved that we recommend to the Council the acquisition of Lot 8, Block 7, Brookview Heights 2nd Addition. Mr. Lewis seconded and the motion carried.

After further discussion the question of the remaining lots was tabled until an estimate of the back taxes and special assessments could be made.

After an investigation of the special assessments, we were advised that the Village would not have to assume any special assessments or back taxes. A telephone poll was made on March 12, 1964 of the members present and it was their recommendation that the Park Board acquire the subsequent tax delinquent lands: Lots 20 and 21, Block 7, Brookview Heights 2nd Addition and Lots 11, 12, 13, and 14, Block 3, Brookview Heights 3rd Addition.

Meeting adjourned at 8:45 P.M.

Respectfully submitted,

Ken Rosland, Sec'y Edina Park Board

KER:skv

Do cuhatener heeded to assure use of the paint for recreational purposes.

(Official Publication)
VILLAGE OF EDINA
4801 W. ZOXH STREET
EDINA, MINNESOTA 55424
NOTICE OF PUBLIC
HEARING ON PROPOSED
STREET VACATIONS
THE EDINA VILLAGE COUNCIL will meet at the Edina Village Hall, 4001 West 50th Street,
Edina, on Tuesday, September 5,
1007, at 7:00 p.m. to consider the
proposed street vacations described as follows:
1. That portion of Doran Drivelying Northerly and Northwesterly of a circle with a
radius of forty-five feet (45')
and a center point located forty-

radius of forty-five feet (45°) and a center point located forty-five feet (46°) East of the West line of Doran Drive and seventy feet (70°) South of the Easterly extension of the North line of Lot 1, Block 1, Bach's Addition

That portion of Laguna Drive lying between dale Avenue and the East Line of Creston Hills Addition.

All objections and recommenda-tions will be heard at said Meeting. By ORDER OF THE VILLAGE

COUNCIL.
FLORENCE B. HALLBERG
Village Clerk
(Aug. 24, 1937)—C-2A-10C

VILLAGE OF EDINA
4801 W. SOTH STREET
EDINA, MINNESOTA 55424
NOTICE OF PUBLIC
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Edina, on Tuesday, September 5,
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proposed street vacations described as follows;
1. That portion of Doran Drivet
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and a canter point located forty-

westerly of a circle with a radius of forty-five feet (45') and a center point located forty-five feet (48') East of the West line of Doran Drive and seventy feet (70') South of the Fasterly extension of the North line of Lot 1, Block 1, Bach's Addition
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ing ORDER OF THE VILLAGE COUNCIL FLORENCE B. HALLBERG Village Clerk (Aug. 24, 1997)—C-2A-10C

(Official Publication)
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4801 W. 50TH STREET
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COUNCIL.
FLORENCE B. HALLBERG
Village Clerk
(Aug. 24, 1967)—C-2A-10C

(Official Publication)
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(Aug. 24, 1267)—C-2A-10C

(Official Publication)
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BY ORDER OF THE VILLAGE COUNCIL.
FLORENCE B. HALLBERG
Village Clerk
(Aug. 24, 1967)—C-2A-10C

(Official Publication)
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FLORENCE B. HALLBERG
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(Aug. 24, 1967)—C-2A-10C

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VILLAGE OF EDINA
4801 W. 50TH STREET
EDINA, MINNESOTA 55424
NOTICE OF PUBLIC
HEARING ON PROPOSED
STREET VACATIONS
THE EDINA VILLAGE COUNCIL will meet at the Edina Village Hall, 4801 West 50th Street,
Edina, on Tuesday, September 5,
1967, at 7:00 p.m. to consider the
proposed street vacations described as follows:
1. That portion of Doran Drive

as follows:
That portion of Doran Drive
lying Northerly and Northwesterly of a circle with a
radius of forty-five feet (45') radius of forty-five feet (45') and a center point located forty-five feet (45') East of the West line of Doran Drive and seventy feet (70') South of the Easterly extension of the North line of Lot 1, Block 1, Bach's Addition

That portion of Laguna Drive lying between Wooddale Avenue and the East Line of Creston Hills Addition.

All objections and recommenda-tions will be heard at said Meeting. BY ORDER OF THE VILLAGE

BY ORDER OF COUNCIL. FLORENCE B. HALLBERG Village Clerk (Aug. 24, 1967)—C-2A-10C

(Official Publication)
VILLAGE OF EDINA
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BY ORDER OF THE VILLAGE
COUNCIL
FLORENCE B. HALLBERG
Village Clerk
(Aug. 24, 1967)—C-2A-10C

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COUNCIL.
FLORENCE B. HALLBERG
Village Clerk
(Aug. 24, 1987)—C-2A-10C

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COUNCIL FLORENCE B. HALLBERG Village Clerk (Aug. 24, 1967)—C-2A-10C

AFFIDAVIT OF PUBLICATION

Edina-Morningside Courier

12 Suburban Square

Hopkins, Minnesota

State of Minnesota County of Hennepin

W. JOHN BERTRAM, being duly sworn, on oath says he is and during all the times herein stated has been the general manager and printer of the newspaper known as The Edina-Morningside Courler and has full knowledge of the facts herein stated as follows: (1) Said newspaper is printed in the English language in newspaper format and in column and sheet form equivalent in printed space to at least 900 square inches. (2) Said newspaper is a weekly and is distributed at least once each week. (3) Said newspaper has 50% of its news columns devoted to news of local interest to the community which it purports to serve and does not wholly duplicate any other publication and is not made up entirely of patents, plate matter and advertisements. (4) Said newspaper is circulated in and near the municipality which it purports to serve, has at least 500 copies regularly delivered to paying subscribers, has an average of at least 75% of its total circulation currently paid or no more than three months in arrears and has entry as second-class matter in its local post-office. (5) Said newspaper purports to serve the Village of Edina in the County of Hennepin and it has its known office of issue in the City of Hopkins in said county, established and open during its regular business hours for the gathering of news, sale of advertisements and sale of subscriptions and maintained by the managing officer or persons in its employ and subject to his direction and control during all such regular business hours and devoted exclusively during such regular business hours to the business of the newspaper and business related thereto. (6) Said newspaper files a copy of each issue immediately with the State Historical Society. (7) Said newspaper has compiled with all the foregoing conditions for at least two years preceding the day or dates of publication mentioned below. (8) Said newspaper has filed with the Secretary of State of Minnesota prior to January 1, 1966 and each January 1 thereafter an affidavit in the form prescribed by the Secretary W. JOHN BERTRAM, being duly sworn, on oath says he is and during all the times herein stated

He further states on oath that the printed NOTICE OF PUBLIC HEARING ... hereto attached as a part hereof was cut from the columns of said newspaper, and was printed and published therein in the English language, once each week, for successive weeks; Thurs 67 that it was first so published on the day of and was thereafter printed and published on every to and including of the lower case alphabet from A to Z, both inclusive, and is hereby acknowledged as being the size and kind of type used in the composition and publication of said notice, to wit:

Subscribed and sworn to before me this 24 day of Aug 19 67

(Notarial Seal)

Notary Public, Hennepin

My Commission Expires December 26, 1973

(Official Publication)
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BY ORDER OF THE VILLAGE
COUNCIL.
FLORENCE B. HALLBERG
Village Clerk
(Aug. 24, 1967)—C-2A-10C

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Hopkins, Minnesota

State of Minnesota County of Hennepin

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and published therein in the English language, once each week, for successive weeks; that it was first so published on Phurs the 24 day of Aug 1997 and was thereafter printed and published on every to and including of the lower case alphabet from A to Z, both inclusive, and is hereby acknowledged as being the size and kind of type used in the composition and publication of said notice, to wit:

abcdefghijklmnopqrstuvwxyz Subscribed and sworn to before me this (Notarial Seal)

Alice J. Nelson

My Commission Expires December 26, 1973

County, Minn.

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hat portion of Doran
ng Northerly and
sterly of a circle w
lius of forty-five feet

ORDER OF THE VILLAGE NCIL. FLORENCE B. HALLBERG Village Clerk (Aug. 24, 1967)—C-2A-10C

August 30, 1961

Mr. R. T. Crist 6716 Point Drive Edina 24, Minnesota

Dear Mr. Crist:

Here below I have tried to put in as few words as possible my understanding of the basic points of our discussion and the agreement we reached.

- 1. The portion of Laguna Drive from Wooddale Avenue east remains vacated as per action by the Village Council dated July 9, 1956.
- 2. Under this vacation action the south one-half of the vacated portion of Laguna Drive reverted to Mr. Haling, and the north one-half to Village ownership. The Halings wish to claim the portion going to them, and it is their intention to make it an itegral part of their front yard.
- 3. Our general aim for the area which has reverted to Village ownership and has become an integral part of the park is to keep it park-like. However, your request for automobile access across park property to get to the rear of your lot we are willing to grant providing you are willing to grant to the Village easement for pedestrian and park service vehicles traffic over that portion of your lot to get out on the point of land which extends on to the lake.

Your access will start at-and-across Haling's turn-off from Wooddale (Mr. Haling has agreed to this) and thence over park property to your west lot line. It is our intention to keep this path of traffic open to you in fair weather conditions.

I hope this states accurately what we agreed to and would appreciate your letter confirming same.

Sincerely yours,

Clifton E. French

Director Parks and Recreation

alefton Carrench.

CEF:mem

Marvesber 22, 1966

Mr. Francosk C. Fletcher Thempoon, Essains, Fletcher & McKing 600 Midlani Bunk Building Minnespolis, Minnespote 55401.

Mr. George Maloney Maloney, Carroll and Class 1910 First Mational Bank Mailding Minnespolis, Himnesche 55402

Der Vacation of Legons Drive

Good Louisin:

I have been savised by the Village of Minn that the dispute between Mr. Crist and Mrs. Maling arising out of the vession of part of lagues Brive has not yet been resolved. The Village, however, would like to see this matter resolved if at all possible and to that end I would like to propose that each of you attend a meeting with the Park Director, Mrs Bosland, and me on Thursday, December 1st, at 9:00 a.m. in our offices. Meals you places let me know if this time and place is agreeable and if not what other time and place would be matiatachery for you.

For body yours,

William A. Whitlock

Wille

Mr. Marren C. Myda